

03-0845 A.M.M. v. Rescue Rooter Issued: 4/27/05

A. M. M. asks the Utah Labor Commission to review Administrative Law Judge La Jeunesse's decision regarding Mr. M.'s claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

BACKGROUND AND ISSUES PRESENTED

On August 19, 2003, Mr. M. filed an application for hearing with the Commission to compel Rescue Rooter and its workers' compensation insurance carrier, Zurich American Insurance (referred to jointly as "Rescue Rooter" hereafter), to pay workers' compensation benefits for injuries Mr. M. allegedly suffered while working for Rescue Rooter on November 22, 2002.

Judge La Jeunesse held an evidentiary hearing on Mr. M. claim on April 9, 2004. On September 10, 2004, Judge La Jeunesse awarded 1) medical benefits; 2) temporary total disability compensation from November 22, 2002, to March 31, 2003; and 3) permanent partial disability compensation based on Mr. M.' 9% whole person impairment caused by his work injury. Judge La Jeunesse computed the dollar amount of Mr. M.' temporary total and permanent partial disability compensation based on Mr. M.' hourly wage of \$6.90 for 40 hours per week.

In his motion for review, Mr. M. argues that his disability compensation should be based not only on his hourly wage, but also on commissions he would have earned but for the work accident. Mr. M. also argues that he should continue receiving temporary total disability compensation because he has not yet reached medical stability.

FINDINGS OF FACT

The Commission affirms and adopts Judge La Jeunesse's findings of fact.

DISCUSSION AND CONCLUSION OF LAW

As a preliminary matter, the Commission notes that Mr. M. has proffered evidence in support of his motion for review that was not presented to Judge La Jeunesse as part of the formal evidentiary hearing on April 9, 2004. Section 63-46b-8(1)(d) of the Utah Administrative Procedures Act ("UAPA") requires that all parties be afforded the "opportunity to present evidence, argue, respond, conduct cross examination, and submit rebuttal evidence." Furthermore, §63-46b-8(2) of UAPA authorizes "appropriate measures necessary to preserve the integrity of the hearing." The evidentiary hearing that was held on Mr. M.' claim on April 9, 2004, provided the parties full opportunity to present their evidence and argument, as well as challenge each other's evidence and argument. To now accept additional evidence from Mr. M., after the evidentiary hearing has been concluded, would deprive Rescue Rooter of its right to "respond, conduct cross examination, and submit rebuttal evidence" and seriously impair the integrity of the adjudicatory process. Furthermore, it is apparent that the material in question could have been obtained in time to be

submitted at the evidentiary hearing. The Commission therefore declines to accept such material now.

Turning to Mr. M.' argument that his disability compensation should be based on his hourly wage plus anticipated commissions, the Commission finds insufficient evidence in the record to establish what, if any, commission he would have earned but for his work accident. The Commission therefore concludes that Judge La Jeunesse properly computed Mr. M.' disability compensation on the basis of the only earnings actually proved by Mr. M., which was his regular hourly wage of \$6.90 per hour.

Mr. M. also argues that the medical record does not support Judge La Jeunesse's determination that Mr. M. reached medical stability on March 31, 2003. The Commission disagrees. Based on the medical information submitted by Dr. Peterson and Dr. Goldstein, the evidence establishes that Mr. M. reached medical stability as determined by Judge La Jeunesse.

ORDER

The Commission affirms and adopts Judge La Jeunesse's decision and denies Mr. M.' motion for review. It is so ordered.

Dated this 27th day of April, 2005.

R. Lee Ellertson, Commissioner